

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN KARL RAY BUNTON,

Plaintiff,

v.

CITY OF MENDOTA POLICE CHIEF, et
al.,

Defendants.

Case No.: 1:23-cv-00211-JLT-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS AND ONE DEFENDANT

(Doc. 23, 33)

Benjamin Karl Ray Bunton, proceeding *pro se* and *in forma pauperis*, initiated this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) The magistrate screened the first amended complaint and determined Plaintiff stated cognizable claims under the First and Fourth Amendments but no other claims. (Doc. 14.) The Court directed Plaintiff to file a second amended complaint or a notice stating he wished to proceed only on the cognizable claims. Plaintiff filed the latter. (Doc. 15.) The Court then adopted the magistrate judge's findings and recommendations in full and dismissed the remaining claims and defendants. (Doc. 18.)

A few weeks later, Plaintiff filed a "Motion to Add Two Additional Defendants" (Doc. 19), which the magistrate judge construed as a motion to amend Plaintiff's first amended complaint (Doc. 20). The magistrate judge granted Plaintiff's motion to amend but ordered that Plaintiff file a second amended complaint that contained all applicable allegations against all

1 identified defendants in a single filing. The Court granted Plaintiff 30 days to file a second
2 amended complaint. (Doc. 20.) Once again, Plaintiff filed a notice of request to proceed on
3 cognizable claims in the first amended complaint. (Doc. 21.) Again, a few weeks later, Plaintiff
4 lodged a second amended complaint. (Doc. 23).

5 On December 5, 2023, the magistrate judge issued findings and recommendations
6 addressing the second amended complaint and recommending that this action proceed on
7 Plaintiff's First and Fourth Amendment claims against Mendota Police Officer Renteria, Building
8 Inspector/City Manager Christian Gonzalez, and two fictitiously named Mendota Police Officers.
9 (Doc. 33.) The magistrate judge also recommended that the City of Mendota Police Chief be
10 dismissed with leave to amend and that all other claims be dismissed for failure to state a claim.
11 (*Id.*) The Court granted Plaintiff 14 days in which to file objections to the findings and
12 recommendations. Plaintiff did not file objections and the time to do so has expired.

13 According to 28 U.S.C. § 636 (b)(1)(C) and *Britt v. Simi Valley United School Dist.*, 708
14 F.2d 452, 454 (9th Cir. 1983), this Court conducted a de novo review of the case. Having
15 carefully reviewed the matter, the Court finds the findings and recommendations are supported by
16 the record and proper analysis. Thus, the Court **ORDERS**:

- 17 1. The findings and recommendations dated December 5, 2023 (Doc. 33), are
18 **ADOPTED IN FULL.**
- 19 2. This action **SHALL PROCEED** on the following claims asserted in the second
20 amended complaint (Doc. 23):
 - 21 a) Fourth Amendment claims for unreasonable search and seizure against
22 Gonzalez and Does 1-2 for their actions prior to and at the conclusion of
23 Mendota City Council meetings in August 2022 and October 2022;
 - 24 b) Fourth Amendment claims for excessive use of force against Gonzalez and
25 Does 1-2 for their actions in August 2022 and October 2022; and against
26 Gonzalez, Renteria, and Does 1-2 for their actions on or around November
27 18, 2022; and
 - 28 c) First Amendment retaliation claims against Renteria for questioning

1 Plaintiff at his job and following him in November 2022; and against
2 Gonzalez and Does 1-2 for their alleged harassment, search, and detention
3 of Plaintiff in August 2022 and October 2022, and November 15, 2022;

4 3. All claims against the Police Chief are **DISMISSED** with leave to amend.

5 4. All other potential claims are **DISMISSED** for failure to state a claim.

6
7 IT IS SO ORDERED.

8 Dated: **January 3, 2024**


UNITED STATES DISTRICT JUDGE